

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Alfred William LaSure,)	Civil Action No.: 9:13-cv-03136-RBH
)	
Petitioner,)	
)	
v.)	ORDER
)	
South Carolina Department of)	
Mental Health,)	
)	
Respondent.)	
_____)	

Petitioner Alfred William LaSure, proceeding *pro se*, filed this civil action under 28 U.S.C. § 2241, alleging violations of his constitutional rights. Specifically, Petitioner challenges the conditions of his civil commitment to the South Carolina Department of Mental Health’s Sexually Violent Predator Program. The matter is now before the Court after the issuance of the Report and Recommendation (“R&R”) of United States Magistrate Judge Bristow Marchant on January 17, 2014.¹ *See* ECF No. 15. In the R&R, the Magistrate Judge recommends that the Court dismiss the petition *without prejudice* because Petitioner fails to state a cognizable claim under § 2241.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court is charged with making a *de novo* determination of those portions of the R&R to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

¹ In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02 (D.S.C.), this matter was referred to the Magistrate Judge for pretrial handling.

The right to *de novo* review may be waived by the failure to file timely objections. *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The Court need not conduct a *de novo* review when a party makes only “general and conclusory objections that do not direct the [C]ourt to a specific error in the [M]agistrate’s proposed findings and recommendations.” *Id.* Moreover, in the absence of objections to the R&R, the Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). However, in the absence of objections, the Court must “ ‘satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’ ” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

The Magistrate Judge recommends that the Court dismiss the petition *without prejudice* because Petitioner fails to state a cognizable claim under § 2241. In his objections, Petitioner does not specifically object to the Magistrate Judge’s recommendation.² Instead, Petitioner, who has already attempted to amend his petition twice, submits an amended complaint alleging claims under 42 U.S.C. § 1983. *See* Fed. R. Civ. P. 15(a)(1) (“A party may amend its pleading *once* as a matter of course.” (emphasis added)). Because of the separate rules governing the filing of habeas and non-habeas actions, this Court finds that converting Plaintiff’s habeas claims to § 1983 claims at this time is not appropriate. Accordingly, the Court finds no clear error in the Magistrate Judge’s recommendation, and Petitioner’s petition is dismissed *without prejudice*.

CONCLUSION

The Court has thoroughly reviewed the entire record, including the motion for summary judgment, the R&R, objections to the R&R, and applicable law. For the reasons stated above and

² In his objections, Petitioner also asks the Court to order the Department of Mental Health to stop interfering with his outgoing mail. Such a request is inappropriate by way of objections to an R&R. To the extent the request is a motion for injunctive relief, the Court finds no basis to grant it without any legal or factual support. Accordingly, the request is denied.

by the Magistrate Judge, the Court hereby overrules Petitioner's objections and adopts the Magistrate Judge's R&R.

IT IS THEREFORE ORDERED that Petitioner's § 2241 petition is **DISMISSED** *without prejudice*. All pending motions are deemed **MOOT**.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

Florence, South Carolina
June 5, 2014